

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.17 OF 2006

1. Balu Bajaba Karande & Ors. Applicants.

V/s

The State of Maharashtra

...Respondent.

Mr. C.K. Pendse i/b Rakesh Bhatkar for the applicants.

Ms. S.D. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 25th January, 2006

P.C.:

1. Heard the learned counsel for the applicants and

the learned APP for the State.

2. On the last occasion, the learned APP was directed to take instructions from the Investigating Officer and make a statement whether the doctor who performed the post-mortem had given his opinion regarding the cause of death. The learned APP candidly submitted that, so far, the doctor has reserved his opinion and has not stated the cause of death.

3. It is the case of the prosecution that by way of retaliation the present applicants in order to take revenge of the death of their relative Anjanabai

assaulted the complainant and his family members and
 in view of the attack that ensued, the deceased died
 as a result of the injuries which were inflicted by
 the present applicants. The post-mortem note reveals
 that there are four abrasions on the body of the
 deceased which are found on the left knee and left
 ankle and two abrasions on the forearm. The doctor
 has reserved his opinion regarding the cause of death.
 Apart from that, the names of other applicants i.e.
 applicant Nos. 4, 6, 7 and 8 have appeared in the
 statements of the witnesses almost after a lapse of 23
 days. In the complaint, all the members of
 applicants' family have been shown as accused.
 Though, normally, in a case where the complaint is
 filed for the offence punishable under section 302,
 143, 147, 337, 452, 342, 427 of the I.P.C., the
 question of grant of bail does not arise, yet, section
 438 does not create a bar for granting bail merely
 because the offence under section 302 is alleged to
 have been committed by the applicant. In the present
 case, the facts create doubt regarding the cause of
 death of the deceased and it appears prima facie that
 the deceased did not die as a result of the injuries
 which were inflicted on her body. In this view of the
 matter, in my view, the prima facie case has been made
 out by the applicants for grant of anticipatory bail

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as it has not been established that the death of the deceased was a homicidal death.

4. The applicants, therefore, in the event of their arrest in connection with the offence which is registered with the Manchar Police Station, Pune vide C.R. No. 117 of 2005 be released on bail in the sum of Rs 5000/- each with one or two sureties in the like amount each. The applicants Nos. 1, 3, 5, 6 and 8 to report to the aforesaid Police Station once in a week till the charge-sheet is filed and thereafter once in a month.

5. Criminal Application is allowed in the above terms.

V.M. KANADE, J.